

**IN THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF WEST VIRGINIA**

HUNTINGTON DIVISION

JOHN MACK SMITH,

Plaintiff,

v.

CIVIL ACTION NO. 3:15-3387

WEST VIRGINIA REGIONAL JAIL
& CORRECTIONAL FACILITY AUTHORITY;
JOE DELONG, individually and as Executive Director;
WEST VIRGINIA REGIONAL JAIL & CORRECTIONAL
FACILITY AUTHORITY;
C. O. BLEVINS; C. O. HOLLEY; LARRY CRAWFORD;
and C. O. DAVID KING,

Defendants.

MEMORANDUM OPINION AND ORDER

This action was referred to the Honorable Cheryl A. Eifert, United States Magistrate Judge, for submission to this Court of proposed findings of fact and recommendation for disposition, pursuant to 28 U.S.C. § 636(b)(1)(B). The Magistrate Judge has submitted findings of fact and recommended that Defendant Joe DeLong's Motion to Dismiss (ECF No. 7) be denied; the West Virginia Regional Jail & Correctional Facility Authority's Motion to Dismiss for insufficient service of process be denied (ECF No. 7), as moot, but its Motions to Dismiss under Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6) based upon Eleventh Amendment immunity be granted (ECF No. 7, 32); Plaintiff's Complaint and Amendment Complaint be dismissed, with prejudice, against the West Virginia Regional Jail & Correctional Facility Authority, but continue to pend against the remaining defendants; and the West Virginia Jail Correctional Facility Authority be

removed as a defendant from the style of this action. Neither party has filed objections to the Magistrate Judge's findings and recommendations.

Accordingly, the Court accepts and incorporates herein the findings and recommendation of the Magistrate Judge and **ORDERS** that Defendant Joe DeLong's Motion to Dismiss (ECF No. 7) be **DENIED**; the West Virginia Regional Jail & Correctional Facility Authority's Motion to Dismiss for insufficient service of process be **DENIED** (ECF No. 7), **as moot**, but its Motions to Dismiss under Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6) based upon Eleventh Amendment immunity be **GRANTED** (ECF No. 7, 32); Plaintiff's Complaint and Amendment Complaint be **DISMISSED, with prejudice**, against the West Virginia Regional Jail & Correctional Facility Authority, but continue to pend against the remaining defendants; and the West Virginia Jail Correctional Facility Authority be removed as a defendant from the style of this action, consistent with the findings and recommendations.

The Court **DIRECTS** the Clerk to forward copies of this written opinion and order to all counsel of record, and any unrepresented parties.

ENTER: February 19, 2016



ROBERT C. CHAMBERS, CHIEF JUDGE